

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SBC Cable Co.)	
)	CSR-7014-E
Petition for Determination of)	
Effective Competition in Shelbyville, IN)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 27, 2007

Released: March 1, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. SBC Cable Co. d/b/a SusCom (“SusCom”) has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that its cable television system serving Shelbyville, Indiana (the “Community”) is subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”), and is therefore exempt from rate regulation.¹ No opposition to the petition was filed. We grant the petition finding that SusCom is subject to effective competition in the Community.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

¹ 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁵ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the Community are DBS subscribers, we conclude that the population of the Shelbyville may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We find further that SusCom has demonstrated that the Community is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. SusCom sought to determine the competing provider penetration in the Community by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS subscribers within the Community on a five-digit zip code basis.⁹ SusCom asserts that it is the largest MVPD in the Community because it has compared its residential subscriber totals for the Community against the aggregate totals of the DBS providers' subscribers.¹⁰ Based upon the aggregate DBS subscriber penetration levels, calculated using 2000 Census household data, we find that SusCom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, is 29.38 percent in Shelbyville, Indiana.¹¹ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that SusCom has submitted sufficient evidence

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ SusCom Petition at 7-8, Exhibits B & D.

¹⁰ SusCom Petition at 8. The petition also contains a Declaration from Donald Richey, Regional Manager for the Shelbyville Division of Susquehanna Communications attesting to the veracity of statements made in the petition.

¹¹ $3,362 \text{ DBS Subscribers} \div 11,444 \text{ Shelbyville households} = 29.38\%$.

demonstrating that its cable system serving the Community is subject to competing provider effective competition.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed by SBC Cable Co. d/b/a SusCom for a determination of effective competition in Shelbyville, Indiana **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certification to regulate basic service rates granted to the local franchising authority overseeing SBC Cable Co. d/b/a SusCom in the affected Community **IS REVOKED**.

7. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.¹²

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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¹² 47 C.F.R. § 0.283.